

CHAPTER 4

District Court

Subchapter 4.000 General Provisions

Rule 4.001 Applicability

Procedure in the district and municipal courts is governed by the rules applicable to other actions. The rules in this chapter apply to the specific types of proceedings within the jurisdiction of the district and municipal courts.

(Current as of 1/01/2004)

Rule 4.002 Transfer of Actions From District Court to Circuit Court

(A) Counterclaim or Cross-Claim in Excess of Jurisdiction.

(1) If a defendant asserts a counterclaim or cross-claim seeking relief of an amount or nature beyond the jurisdiction or power of the district court in which the action is pending, and accompanies the notice of the claim with an affidavit stating that the defendant is justly entitled to the relief demanded, the clerk shall record the pleading and affidavit and present them to the judge to whom the action is assigned. The judge shall either order the action transferred to the circuit court to which appeal of the action would ordinarily lie or inform the defendant that transfer will not be ordered without a motion and notice to the other parties.

(2) MCR 4.201(G)(2) and 4.202(I)(4) govern transfer of summary proceedings to recover possession of premises.

(B) Change in Conditions.

(1) A party may, at any time, file a motion with the district court in which an action is pending, requesting that the action be transferred to circuit court. The motion must be supported by an affidavit stating that

(a) due to a change in condition or circumstance, or

(b) due to facts not known by the party at the time the action was commenced, the party wishes to seek relief of an amount or nature that is beyond the jurisdiction or power of the court to grant.

(2) If the district court finds that the party filing the motion may be entitled to the relief the party now seeks to claim and that the delay in making the claim is excusable, the court shall order the action transferred to the circuit court to which an appeal of the action would ordinarily lie.

(C) Conditions Precedent to Transfer. The action may not be transferred under this rule until the party seeking transfer pays to the opposing parties the costs they have reasonably incurred up to that time that would not have been incurred if the action had originally been brought in circuit court, and pays the statutory circuit court filing fee to the clerk of the court from which the action is to be transferred. If a case is entirely transferred from district court to circuit court and the jury fee was paid in the district court, the district court clerk shall forward the fee to the circuit court with the papers and filing fee under subrule (D). If the amount paid to the district court for the jury fee is less than the circuit court jury fee, then the party requesting the jury shall pay the difference to the circuit court.

(D) Filing in Circuit Court. After the court has ordered transfer and the costs and fees required by subrule (C) have been paid, the clerk of the court from which the action is transferred shall forward to the clerk of the circuit court the original papers in the action and the circuit court filing fee.

(E) Procedure After Transfer. After transfer no further proceedings may be conducted in the district court, and the action shall proceed in the circuit court. The circuit court may order further pleadings and set the time when they must be filed.

(Current as of 1/01/2004)

Rule 4.003 Removal of Actions From Circuit Court to District Court. [Repealed May 8, 1997, effective July 1, 1997 - Reporter.]

(Current as of 1/01/2004)

## Subchapter 4.100 Civil Infraction Actions

### Rule 4.101 Civil Infraction Actions

#### (A) Citation; Complaint; Summons; Warrant.

(1) Except as otherwise provided by court rule or statute, a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator, and filing the citation in the district court.

(a) If the infraction is a parking violation, the action may be initiated by an authorized person placing a citation securely on the vehicle or mailing a citation to the registered owner of the vehicle. In either event, the citation must be filed in the district court.

(b) If the infraction is a municipal civil infraction, the action may be initiated by an authorized local official serving a written citation on the alleged violator. If the infraction involves the use or occupancy of land or a building or other structure, service may be accomplished by posting the citation at the site and sending a copy to the owner by first-class mail.

The citation serves as the complaint in a civil infraction action, and may be filed either on paper or electronically.

(2) The citation serves as a summons to command

(a) the initial appearance of the defendant; and

(b) a response from the defendant as to his or her responsibility for the alleged violation.

(3) A single citation may not allege both a misdemeanor and a civil infraction.

(4) A warrant may not be issued for a civil infraction unless permitted by statute.

#### (B) Appearances; Failure to Appear; Default Judgment.

(1) Depending on the nature of the violation and on the procedure appropriate to the violation, a defendant may appear in person, by representation, or by mail.

(2) A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear.

(3) A clerk of the court may enter a default after certifying, on a form to be furnished by the court, that the defendant has not made a scheduled appearance, or has not answered a citation within the time allowed by statute.

(4) If a defendant fails to appear or otherwise to respond to any matter pending relative to a civil infraction action, the court:

(a) must enter a default against the defendant;

(b) must make a determination of responsibility, if the complaint is sufficient;

(c) must impose a sanction by entering a default judgment;

(d) must send the defendant a notice of the entry of the default judgment and the sanctions imposed; and

(e) may retain the driver's license of a nonresident as permitted by statute, if the court has received that license pursuant to statute. The court need not retain the license past its expiration date.

(5) If a defendant fails to appear or otherwise to respond to any matter pending relative to a traffic civil infraction, the court

(a) must notify the secretary of state of the entry of the default judgment, as required by MCL 257.732, and

(b) must initiate the procedures required by MCL 257.321a.

(6) If a defendant fails to appear or otherwise to respond to any matter pending relative to a state civil infraction, the court must initiate the procedures required by MCL 257.321a.

### (C) Motion to Set Aside Default Judgment.

(1) A defendant may move to set aside a default judgment within 14 days after the court sends notice of the judgment to the defendant. The motion

(a) may be informal,

(b) may be either written or presented to the court in person,

(c) must explain the reason for the nonappearance of the defendant,

(d) must state that the defendant wants to offer a defense to or an explanation of the complaint, and

(e) must be accompanied by a cash bond equal to the fine and costs due at the time the motion is filed.

(2) For good cause, the court may

(a) set aside the default and direct that a hearing on the complaint take place, or

(b) schedule a hearing on the motion to set aside the default judgment.

(3) A defendant who does not file this motion on time may use the procedure set forth in MCR 2.603(D).

### (D) Response.

(1) Except as provided in subrule (4), an admission without explanation may be offered to and accepted by

(a) a district judge;

(b) a district court magistrate as authorized by the chief judge, the presiding judge, or the only judge of the district; or

(c) other district court personnel, as authorized by a judge of the district.

(2) Except as provided in subrule (4), an admission with explanation may be written or offered orally to a judge or district court magistrate, as authorized by the district judge.

(3) Except as provided in subrule (4), a denial of responsibility must be made by the defendant appearing at a time set either by the citation or as the result of a communication with the court.

(4) If the violation is a railway municipal civil infraction, and there has been damage to property or a vehicle has been impounded, the defendant's response must be made at a formal hearing.

### (E) Contested Actions; Notice; Defaults.

(1) A contested action may not be heard until a citation is filed with the court. If the citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer or official who issued it, and is filed on paper. A citation that is not signed and filed on paper, when required by the court, will be dismissed with prejudice.

(2) An informal hearing will be held unless

(a) a party expressly requests a formal hearing, or

(b) the violation is a trailway municipal civil infraction which requires a formal hearing pursuant to MCL 600.8717(4).

(3) The provisions of MCR 2.501(C) regarding the length of notice of trial assignment do not apply in civil infraction actions.

(4) A defendant who obtains a hearing date other than the date specified in the citation, but who does not appear to explain or contest responsibility, is in default, and the procedures established by subrules (B)(4)-(6) apply.

## (F) Postdetermination Orders; Sanctions, Fines, and Costs; Schedules.

(1) A court may not increase a scheduled civil fine because the defendant has requested a hearing.

(2) Upon a finding of responsibility in a traffic civil infraction action, the court:

(a) must inform the secretary of state of the finding, as required by MCL 257.732; and

(b) must initiate the procedures required by MCL 257.321a, if the defendant fails to pay a fine or to comply with an order or judgment of the court.

(3) Upon a finding of responsibility in a state civil infraction action, the court must initiate the procedures required by MCL 257.321a(1), if the defendant fails to pay a fine or to comply with an order or judgment of the court.

(4) The court may waive fines, costs and fees, pursuant to statute or court rule, or to correct clerical error.

## (G) Appeal; Bond.

(1) An appeal following a formal hearing is a matter of right. Except as otherwise provided in this rule, the appeal is governed by subchapter 7.100.

(a) A defendant who appeals must post with the district court, at the time the appeal is taken, a bond equal to the fine and costs imposed. A defendant who has paid the fine and costs is not required to post a bond.

(b) If a defendant who has posted a bond fails to comply with the requirements of MCR 7.101(C)(2) or (F)(1), the appeal may be considered abandoned, and the district court may dismiss the appeal on 7 days' notice to the parties pursuant to MCR 7.101(G). The court clerk must promptly notify the circuit court of a dismissal and the circuit court shall dismiss the claim of appeal. If the appeal is dismissed or the judgment is affirmed, the district court may apply the bond to the fine and costs.

(c) A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that provided the plaintiff's attorney for the formal hearing. A bond is not required.

(2) An appeal following an informal hearing is a matter of right, and must be asserted in writing, within 7 days after the decision, on a form to be provided by the court. The appeal will result in a de novo formal hearing.

(a) A defendant who appeals must post a bond as provided in subrule (1)(a). If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is affirmed, the bond may be applied to the fine and costs.

(b) A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that is responsible for providing the plaintiff's attorney for the formal hearing. A bond is not required.

(3) There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in subrule (1)(a). If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs.

(Current as of 1/01/2004)

## Subchapter 4.200 Landlord-Tenant Proceedings; Land Contract Forfeiture

### Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A) Applicable Rules; Forms. Except as provided by this rule and MCL 600.5701 *et seq.*, a summary

proceeding to recover possession of premises from a person in possession as described in MCL 600.5714 is governed by the Michigan Court Rules. Forms available for public distribution at the court clerk's office may be used in the proceeding.

## (B) Complaint.

(1) In General. The complaint must

- (a) comply with the general pleading requirements;
- (b) have attached to it a copy of any written instrument on which occupancy was or is based;
- (c) have attached to it copies of any notice to quit and any demand for possession (the copies must show when and how they were served);
- (d) describe the premises or the defendant's holding if it is less than the entire premises;
- (e) show the plaintiff's right to possession and indicate why the defendant's possession is improper or unauthorized; and
- (f) demand a jury trial, if the plaintiff wishes one. The jury trial fee must be paid when the demand is made.

(2) Specific Requirements.

(a) If rent or other money is due and unpaid, the complaint must show

- (i) the rental period and rate;
- (ii) the amount due and unpaid when the complaint was filed; and
- (iii) the date or dates the payments became due.

(b) If the tenancy involves housing operated by or under the rules of a governmental unit, the complaint must contain specific reference to the rules or law establishing the basis for ending the tenancy.

(c) If the tenancy is of residential premises, the complaint must allege that the lessor or licensor has performed his or her covenants to keep the premises fit for the use intended and in reasonable repair during the term of the lease or license, unless the parties to the lease or license have modified those obligations.

(d) If possession is claimed for a serious and continuing health hazard or for extensive and continuing physical injury to the premises pursuant to MCL 600.5714(1)(c), the complaint must

- (i) describe the nature and the seriousness or extent of the condition on which the complaint is based, and
- (ii) state the period of time for which the property owner has been aware of the condition.

(e) If possession is sought for trespass pursuant to MCL 600.5714(1)(d), the complaint must describe, when known by the plaintiff, the conditions under which possession was unlawfully taken or is unlawfully held and allege that no lawful tenancy of the premises has existed between the parties since defendant took possession.

## (C) Summons.

(1) The summons must comply with MCR 2.102, except that it must command the defendant to appear for trial in accord with MCL 600.5735(2), unless by local court rule the provisions of MCL 600.5735(4) have been made applicable.

(2) The summons must also include the following advice to the defendant:

- (a) The defendant has the right to employ an attorney to assist in answering the complaint and in preparing defenses.
- (b) If the defendant does not have an attorney but does have money to retain one, he or she might locate an attorney through the State Bar of Michigan or a local lawyer referral service.
- (c) If the defendant does not have an attorney and cannot pay for legal help, he or she might qualify for assistance through a local legal aid office.

(d) The defendant has a right to a jury trial which will be lost unless it is demanded in the first defense response, written or oral. The jury trial fee must be paid when the demand is made, unless payment of fees is waived or suspended under MCR 2.002.

**(D) Service of Process.** A copy of the summons and complaint and all attachments must be served on the defendant by mail. Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service. In addition to mailing, the defendant must be served in one of the following ways:

- (1) By a method provided in MCR 2.105;
- (2) By delivering the papers at the premises to a member of the defendant's household who is
  - (a) of suitable age,
  - (b) informed of the contents, and
  - (c) asked to deliver the papers to the defendant; or
- (3) After diligent attempts at personal service have been made, by securely attaching the papers to the main entrance of the tenant's dwelling unit. A return of service made under subrule (D)(3) must list the attempts at personal service. Service under subrule (D)(3) is effective only if a return of service is filed showing that, after diligent attempts, personal service could not be made. An officer who files proof that service was made under subrule (D)(3) is entitled to the regular personal service fee.

**(E) Recording.** All landlord-tenant summary proceedings conducted in open court must be recorded by stenographic or mechanical means, and only a reporter or recorder certified under MCR 8.108(G) may file a transcript of the record in a Michigan court.

**(F) Appearance and Answer; Default.**

- (1) Appearance and Answer. The defendant or the defendant's attorney must appear and answer the complaint by the date on the summons. Appearance and answer may be made as follows:
  - (a) By filing a written answer or a motion under MCR 2.115 or 2.116 and serving a copy on the plaintiff or the plaintiff's attorney. If proof of the service is not filed before the hearing, the defendant or the defendant's attorney may attest to service on the record.
  - (b) By orally answering each allegation in the complaint at the hearing. The answers must be recorded or noted on the complaint.
- (2) Right to an Attorney. If either party appears in person without an attorney, the court must inform that party of the right to retain an attorney. The court must also inform the party about legal aid assistance when it is available.
- (3) Jury Demand. If the defendant wants a jury trial, he or she must demand it in the first response, written or oral. The jury trial fee must be paid when the demand is made.
- (4) Default.
  - (a) If the defendant fails to appear, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment. If satisfied that the complaint is accurate, the court must enter a default judgment under MCL 600.5741, and in accord with subrule (K). The default judgment must be mailed to the defendant by the court clerk and must inform the defendant that (if applicable)
    - (i) he or she may be evicted from the premises;
    - (ii) he or she may be liable for a money judgment.
  - (b) If the plaintiff fails to appear, a default judgment as to costs under MCL 600.5747 may be entered.
  - (c) If a party fails to appear, the court may adjourn the hearing for up to 7 days. If the hearing is adjourned, the court must mail notice of the new date to the party who failed to appear.

(5) Trial Fee. If both parties appear without demanding a jury trial, the court must determine that a true issue of fact or law exists before ordering payment of the trial fee.

## (G) Claims and Counterclaims.

### (1) Joinder.

(a) A party may join:

(i) A money claim or counterclaim described by MCL 600.5739. A money claim must be separately stated in the complaint. A money counterclaim must be labeled and separately stated in a written answer.

(ii) A claim or counterclaim for equitable relief.

(b) If personal jurisdiction over the defendant was not obtained, a money claim must be

(i) dismissed without prejudice if the defendant does not answer or appear, or

(ii) adjourned until personal jurisdiction over the defendant is obtained.

(c) A court with a territorial jurisdiction which has a population of more than 1,000,000 may provide, by local rule, that a money claim or counterclaim must be tried separately from a claim for possession unless joinder is allowed by leave of the court pursuant to subrule (G)(1)(e).

(d) If trial of a money claim or counterclaim

(i) might substantially delay trial of the possession claim, or

(ii) requires that the premises be returned before damages can be determined,

the court must adjourn the trial of the money claim or counterclaim to a date no later than 28 days after the time expires for issuing an order of eviction. A party may file and serve supplemental pleadings no later than 7 days before trial, except by leave of the court.

(e) If adjudication of a money counterclaim will affect the amount the defendant must pay to prevent issuance of an order of eviction, that counterclaim must be tried at the same time as the claim for possession, subrules (G)(1)(c) and (d) notwithstanding, unless it appears to the court that the counterclaim is without merit.

### (2) Removal.

(a) A summary proceedings action need not be removed from the court in which it is filed because an equitable defense or counterclaim is interposed.

(b) If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, shall order removal of that portion of the action to the circuit court, if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit.

## (H) Interim Orders. On motion of either party, or by stipulation, for good cause, a court may issue such interim orders as are necessary, including, but not limited to the following:

### (1) Injunctions. The interim order may award injunctive relief

(a) to prevent the person in possession from damaging the property; or

(b) to prevent the person seeking possession from rendering the premises untenable or from suffering the premises to remain untenable.

### (2) Escrow Orders.

(a) If trial is adjourned more than 7 days and the plaintiff shows a clear need for protection, the court may order the defendant to pay a reasonable rent for the premises from the date the escrow order is entered, including a pro rata amount per day between the date of the order and the next date rent ordinarily would be due. In determining a reasonable rent, the court should consider evidence offered concerning the condition of the premises or other relevant factors. The order must provide that:

(i) payments be made to the court clerk within 7 days of the date of entry of the order, and thereafter within 7 days of the date or dates each month when rent would ordinarily be due, until the right to possession is determined;

(ii) the plaintiff must not interfere with the obligation of the defendant to comply with the escrow order; and

(iii) if the defendant does not comply with the order, the defendant waives the right to a jury trial only as to the possession issue, and the plaintiff is entitled to an immediate trial within 14 days which may be by jury if a party requests it and if, in the court's discretion, the court's schedule permits it. The 14-day limit need not be rigidly adhered to if the plaintiff is responsible for a delay.

(b) Only the court may order the disbursement of money collected under an escrow order. The court must consider the defendant's defenses. If trial was postponed to permit the premises to be repaired, the court may condition disbursement by requiring that the repairs be completed by a certain time. Otherwise, the court may condition disbursement as justice requires.

## (I) Consent Judgment When Party Is Not Represented. The following procedures apply to consent judgments and orders entered when either party is not represented by an attorney.

(1) The judgment or order may not be enforced until 3 regular court business days have elapsed after the judgment or order was entered. The judge shall review, in court, a proposed consent judgment or order with the parties, and shall notify them of the delay required by this subrule at the time the terms of the consent judgment or order are placed on the record.

(2) A party who was not represented by an attorney at the time of the consent proceedings may move to set aside the consent judgment or order within the 3-day period. Such a motion stays the judgment or order until the court decides the motion or dismisses it after notice to the moving party.

(3) The court shall set aside a consent judgment or order on a satisfactory showing that the moving party misunderstood the basis for, or the rights which were being relinquished in, the judgment or order.

## (J) Trial.

(1) Time. When the defendant appears, the court may try the action, or, if good cause is shown, may adjourn trial up to 56 days. If the court adjourns trial for more than 7 days, an escrow order may be entered pursuant to subrule (H)(2). The parties may adjourn trial by stipulation in writing or on the record, subject to the approval of the court.

(2) Pretrial Action. At trial, the court must first decide pretrial motions and determine if there is a triable issue. If there is no triable issue, the court must enter judgment.

(3) Government Reports. If the defendant claims that the plaintiff failed to comply with an ordinance or statute, the court may admit an authenticated copy of any relevant government employee's report filed with a government agency. Objections to the report affect the weight given it, not its admissibility.

(4) Payment or Acceptance of Money. The payment or the acceptance of money by a party before trial does not necessarily prevent or delay the proceedings.

## (K) Judgment.

(1) Requirements. A judgment for the plaintiff must

(a) comply with MCL 600.5741;

(b) state when and under what conditions, if any, an order of eviction will issue;

(c) separately state possession and money awards; and

(d) advise the defendant of the right to appeal or file a postjudgment motion within 10 days.

If the judgment is in favor of the defendant, it must comply with MCL 600.5747.

(2) Injunctions. The judgment may award injunctive relief

(a) to prevent the person in possession from damaging the property; or

(b) to prevent the person seeking possession from rendering the premises untenable, or from suffering the premises to remain untenable.

(3) Partial Payment. The judgment may provide that acceptance of partial payment of an amount due under the judgment will not prevent issuance of an order of eviction.

(4) Costs. Only those costs permitted by MCL 600.5759 may be awarded.

(5) Notice. The court must mail or deliver a copy of the judgment to the parties. The time period for applying for the order of eviction does not begin to run until the judgment is mailed or delivered.

## (L) Order of Eviction.

(1) Request. When the time stated in the judgment expires, a party awarded possession may apply for an order of eviction. The application must:

(a) be written;

(b) be verified by a person having knowledge of the facts stated;

(c) if any money has been paid after entry of the judgment, show the conditions under which it was accepted; and

(d) state whether the party awarded judgment has complied with its terms.

(2) Issuance of Order of Eviction and Delivery of Order. Subject to the provisions of subrule (L)(4), the order of eviction shall be delivered to the person serving the order for service within 7 days after the order is filed.

(3) Issuance Immediately on Judgment. The court may issue an order immediately on entering judgment if

(a) the court is convinced the statutory requirements are satisfied, and

(b) the defendant was given notice, before the judgment of a request for immediate issuance of the order.

The court may condition the order to protect the defendant's interest.

(4) Limitations on Time for Issuance and Execution. Unless a hearing is held after the defendant has been given notice and an opportunity to appear, an order of eviction may not

(a) be issued later than 56 days after judgment is entered,

(b) be executed later than 56 days after it is issued.

(5) Acceptance of Partial Payment. An order of eviction may not be issued if any part of the amount due under the judgment has been paid, unless

(a) a hearing is held after the defendant has been given notice and an opportunity to appear, or

(b) the judgment provides that acceptance of partial payment of the amount due under the judgment will not prevent issuance of an order of eviction.

## (M) Postjudgment Motions. Except as provided in MCR 2.612, any postjudgment motion must be filed no later than 10 days after judgment enters.

(1) If the motion challenges a judgment for possession, the court may not grant a stay unless

(a) the motion is accompanied by an escrow deposit of 1 month's rent, or

(b) the court is satisfied that there are grounds for relief under MCR 2.612(C), and issues an order that waives payment of the escrow; such an order may be ex parte.

If a stay is granted, a hearing shall be held within 14 days after it is issued.

(2) If the judgment does not include an award of possession, the filing of the motion stays proceedings, but the plaintiff may move for an order requiring a bond to secure the stay. If the initial escrow deposit is believed inadequate, the plaintiff may apply

for continuing adequate escrow payments in accord with subrule (H)(2). The filing of a postjudgment motion together with a bond, bond order, or escrow deposit stays all proceedings, including an order of eviction issued but not executed.

## (N) Appeals From Possessory Judgments.

(1) Rules Applicable. Except as provided by this rule, appeals must comply with MCR 7.101, 7.102, and 7.103.

(2) Time. An appeal of right must be filed within 10 days after the entry of judgment.

(3) Stay of Order of Eviction.

(a) Unless a stay is ordered by the trial court, an order of eviction must issue as provided in subrule (L).

(b) The filing of a claim of appeal together with a bond or escrow order of the court stays all proceedings, including an order of eviction issued but not executed.

(4) Appeal Bond; Escrow.

(a) A plaintiff who appeals must file a bond providing that if the plaintiff loses he or she will pay the appeal costs.

(b) A defendant who appeals must file a bond providing that if the defendant loses, he or she will pay

(i) the appeal costs,

(ii) the amount due stated in the judgment, and

(iii) damages from the time of forcible entry, the detainer, the notice to quit, or the demand for possession.

The court may waive the bond requirement of subrule (N)(4)(b)(i) on the grounds stated in MCR 2.002(C) or (D).

(c) If the plaintiff won a possession judgment, the court shall enter an escrow order under subrule (H)(2) and require the defendant to make payments while the appeal is pending. This escrow order may not be retroactive as to arrearages preceding the date of the posttrial escrow order unless there was a pretrial escrow order entered under subrule (H)(2), in which case the total escrow amount may include the amount accrued between the time of the original escrow order and the filing of the appeal.

(d) If it is established that an appellant cannot obtain sureties or make a sufficient cash deposit, the court must permit the appellant to comply with an escrow order.

(O) Objections to Fees Covered by Statute for Orders of Eviction. Objections shall be by motion. The fee to be paid shall be reasonable in light of all the circumstances. In determining the reasonableness of a fee, the court shall consider all issues bearing on reasonableness, including but not limited to

(1) the time of travel to the premises,

(2) the time necessary to execute the order,

(3) the amount and weight of the personal property removed from the premises,

(4) who removed the personal property from the premises,

(5) the distance that the personal property was moved from the premises, and

(6) the actual expenses incurred in executing the order of eviction.

(Current as of 1/01/2004)

### Rule 4.202 Summary Proceedings; Land Contract Forfeiture

(A) Applicable Rules. Except as provided by this rule and MCL 600.5701 *et seq.*, a summary proceeding to recover possession of premises after forfeiture of an executory contract for the purchase of premises as described in MCL 600.5726 is governed by the Michigan Court Rules.

## **(B) Jurisdiction.**

(1) Status of Premises. The proceeding may be brought when the premises are vacant or are in the possession of

- (a) the vendee,
- (b) a party to the contract,
- (c) an assignee of the contract, or
- (d) a third party.

(2) Powers of Court. The court may do all things necessary to hear and resolve the proceeding, including but not limited to

- (a) hearing and deciding all issues,
- (b) ordering joinder of additional parties,
- (c) ordering or permitting amendments or additional pleadings, and
- (d) making and enforcing writs and orders.

## **(C) Necessary Parties. The plaintiff must join as defendants**

- (1) the vendee named in the contract,
- (2) any person known to the plaintiff to be claiming an interest in the premises under the contract, and
- (3) any person in possession of the premises, unless that party has been released from liability.

## **(D) Complaint. The complaint must:**

- (1) comply with the general pleading requirements;
- (2) allege
  - (a) the original selling price,
  - (b) the principal balance due, and
  - (c) the amount in arrears under the contract;
- (3) state with particularity any other material breach claimed as a basis for forfeiture; and
- (4) have attached to it a copy of the notice of forfeiture, showing when and how it was served on each named defendant.

**(E) Summons.** The summons must comply with MCR 2.102 and MCL 600.5735, and command the defendant to appear and answer or take other action permitted by law within the time permitted by statute after service of the summons on the defendant.

**(F) Service of Process.** The defendant must be served with a copy of the complaint and summons under MCR 2.105.

**(G) Recording.** All executory contract summary proceedings conducted in open court must be recorded by stenographic or mechanical means, and only a reporter or recorder certified under MCR 8.108(G) may file a transcript of the record in a Michigan court.

## **(H) Answer; Default.**

- (1) Answer. The answer must comply with general pleading requirements and allege those matters on which the defendant

intends to rely to defeat the claim or any part of it.

(2) Default.

(a) If the defendant fails to appear, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment. If satisfied that the complaint is accurate, the court must enter a default judgment under MCL 600.5741, and in accord with subrule (J). The default judgment must be mailed to the defendant by the court clerk and must inform the defendant that (if applicable)

(i) he or she may be evicted from the premises;

(ii) he or she may be liable for a money judgment.

(b) If the plaintiff fails to appear, a default and judgment as to costs under MCL 600.5747 may be entered.

(c) If a party fails to appear, the court may adjourn the hearing for up to 7 days. If the hearing is adjourned, the court must mail notice of the new date to the party who failed to appear.

(3) Trial Fee. If both parties appear without demanding a jury trial, the court must determine that a true issue of fact or law exists before ordering payment of the trial fee.

(I) Joinder; Removal.

(1) A party may join a claim or counterclaim for equitable relief or a money claim or counterclaim described by MCL 600.5739. A money claim must be separately stated in the complaint. A money counterclaim must be labeled and separately stated in a written answer. If such a joinder is made, the court may order separate summary disposition of the claim for possession, as described by MCL 600.5739.

(2) A court with a territorial jurisdiction which has a population of more than 1,000,000 may provide, by local rule, that a money claim or counterclaim must be tried separately from a claim for possession unless joinder is allowed by leave of the court pursuant to subrule (I)(3).

(3) If adjudication of a money counterclaim will affect the amount the defendant must pay to prevent the issuance of a writ of restitution, the counterclaim must be tried at the same time as the claim for possession, subrules (I)(1) and (2) notwithstanding, unless it appears to the court that the counterclaim is without merit.

(4) If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, shall order removal of that portion of the action, if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit.

(J) Judgment. The judgment

(1) must comply with MCL 600.5741;

(2) must state when, and under what conditions, if any, a writ of restitution will issue;

(3) must state that an appeal or postjudgment motion to challenge the judgment may be filed within 10 days;

(4) may contain such other terms and conditions as the nature of the action and the rights of the parties require; and

(5) must be mailed or delivered by the court to the parties. The time period for applying for the writ of restitution does not begin to run until the judgment is mailed or delivered.

(K) Order of Eviction.

(1) Request. When the time stated in the judgment expires, a party awarded possession may apply for an order of eviction. The application must:

(a) be written;

(b) be verified by a person having knowledge of the facts stated;

(c) if any money due under the judgment has been paid, show the conditions under which it was accepted; and

(d) state whether the party awarded judgment has complied with its terms.

(2) Hearing Required if Part of Judgment Has Been Paid. An order of eviction may not be issued if any part of the amount due under the judgment has been paid unless a hearing has been held after the defendant has been given notice and an opportunity to appear.

(L) Appeal. Except as provided by this rule or by law, the rules applicable to other appeals to circuit court (see MCR 7.101-7.103) apply to appeals from judgments in land contract forfeiture cases. However, in such cases the time limit for filing a claim of appeal under MCR 7.101(B)(1) is 10 days.

(Current as of 1/01/2004)

## Subchapter 4.300 Small Claims Actions

### Rule 4.301 Applicability of Rules

Actions in a small claims division are governed by the procedural provisions of Chapter 84 of the Revised Judicature Act, MCL 600.8401 *et seq.*, and by this subchapter of the rules. After judgment, other applicable Michigan Court Rules govern actions that were brought in a small claims division.

(Current as of 1/01/2004)

### Rule 4.302 Statement of Claim

(A) Contents. The statement of the claim must be in an affidavit in substantially the form approved by the state court administrator. Affidavit forms shall be available at the clerk's office. The nature and amount of the claim must be stated in concise, nontechnical language, and the affidavit must state the date or dates when the claim arose.

(B) Affidavit; Signature.

(1) If the plaintiff is an individual, the affidavit must be signed by the plaintiff, or the plaintiff's guardian, conservator, or next friend.

(2) If the plaintiff is a sole proprietorship, a partnership, or a corporation, the affidavit must be signed by a person authorized to file the claim by MCL 600.8407(3).

(C) Names.

(1) The affidavit must state the full and correct name of the plaintiff and whether the plaintiff is a corporation or a partnership. If the plaintiff was acting under an assumed name when the claim arose, the assumed name must be given.

(2) The defendant may be identified as permitted by MCL 600.8426, or as is proper in other civil actions.

(D) Claims in Excess of Statutory Limitation. If the amount of the plaintiff's claim exceeds the statutory limitation, the actual amount of the claim must be stated. The claim must state that by commencing the action the plaintiff waives any claim to the excess over the statutory limitation, and that the amount equal to the statutory limitation, exclusive of costs, is claimed by the action. A judgment on the claim is a bar to a later action in any court to recover the excess.

(Current as of 1/01/2004)

### Rule 4.303 Notice

(A) Contents. The notice to the defendant must meet the requirements of MCL 600.8404. The court clerk shall notify the plaintiff to appear at the time and place specified with the books, papers, and

witnesses necessary to prove the claim, and that if the plaintiff fails to appear, the claim will be dismissed.

(B) Certified Mail. If the defendant is a corporation or a partnership, the certified mail described in MCL 600.8405 need not be deliverable to the addressee only, but may be deliverable to and signed for by an agent of the addressee.

(C) Notice Not Served. If it appears that notice was not received by the defendant at least 7 days before the appearance date and the defendant does not appear, the clerk must, at the plaintiff's request, issue further notice without additional cost to the plaintiff, setting the hearing for a future date. The notice may be served as provided in MCR 2.105.

(Current as of 1/01/2004)

#### Rule 4.304 Conduct of Trial

(A) Appearance. If the parties appear, the court shall hear the claim as provided in MCL 600.8411. The trial may be adjourned to a later date for good cause.

(B) Nonappearance.

(1) If a defendant fails to appear, judgment may be entered by default if the claim is liquidated, or on the ex parte proofs the court requires if the claim is unliquidated.

(2) If the plaintiff fails to appear, the claim may be dismissed for want of prosecution, the defendant may proceed to trial on the merits, or the action may be adjourned, as the court directs.

(3) If all parties fail to appear, the claim may be dismissed for want of prosecution or the court may order another disposition, as justice requires.

(Current as of 1/01/2004)

#### Rule 4.305 Judgments

(A) Entry of Judgments. A judgment must be entered at the time of the entry of the court's findings, and must contain the payment and stay provisions required by MCL 600.8410(2).

(B) Modification; Vacation. A judgment of the small claims division may be modified or vacated in the same manner as judgments in other civil actions, except that an appeal may not be taken.

(C) Garnishment. A writ of garnishment may not be issued to enforce the judgment until the expiration of 21 days after it was entered. If a judgment had been ordered to be paid by installments, an affidavit for a writ of garnishment must so state and must state that the order has been set aside or vacated.

(Current as of 1/01/2004)

#### Rule 4.306 Removal to Trial Court

(A) Demand. A party may demand that the action be removed from the small claims division to the trial court for further proceedings by

(1) signing a written demand for removal and filing it with the clerk at or before the time set for hearing; or

(2) appearing before the court at the time and place set for hearing and demanding removal.

**(B) Order; Fee.** On receiving a demand for removal, the court shall, by a written order filed in the action, direct removal to the trial court for further proceedings.

- (1) The order must direct a defendant to file a written answer and serve it as provided in MCR 2.107 within 14 days after the date of the order.
- (2) A copy of the order must be mailed to each party by the clerk.
- (3) There is no fee for the removal, order, or mailing.

**(C) Motion for More Definite Statement.** After removal, the affidavit is deemed to be a sufficient statement of the plaintiff's claim unless a defendant, within the time permitted for answer, files a motion for a more definite statement.

- (1) The motion must state the information sought and must be supported by an affidavit that the defendant
  - (a) does not have the information and cannot secure it with the exercise of reasonable diligence, and
  - (b) is unable to answer the plaintiff's claim without it.
- (2) The court may decide the motion without a hearing on just and reasonable terms or may direct that a hearing be held after notice to both parties at a time set by the court.
- (3) If the plaintiff fails to file a more definite statement after having been ordered to do so, the clerk shall dismiss the claim for want of prosecution.

**(D) Default.** On removal, if the defendant fails to file an answer or motion within the time permitted, the clerk shall enter the default of the defendant. MCR 2.603 governs further proceedings.

**(E) Procedure After Removal.** Except as provided in this rule, further proceedings in actions removed to the trial court are governed by the rules applicable to other civil actions.

(Current as of 1/01/2004)

## Subchapter 4.400 Magistrates

### Rule 4.401 Magistrates

**(A) Procedure.** Proceedings involving magistrates must be in accordance with relevant statutes and rules.

**(B) Duties.** Notwithstanding statutory provisions to the contrary, magistrates exercise only those duties expressly authorized by the chief judge of the district or division.

**(C) Control of Magisterial Action.** An action taken by a magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves.

**(D) Appeals.** Appeals of right may be taken from a decision of the magistrate to the district court in the district in which the magistrate serves by filing a written claim of appeal in substantially the form provided by MCR 7.101(C) within 7 days of the entry of the decision of the magistrate. No fee is required on the filing of the appeal, except as otherwise provided by statute or court rule. The action is heard de novo by the district court.

(Current as of 1/01/2004)